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UNCLAS SECTION 01 OF 02 HANOI 000966

SIPDIS

SENSITIVE

STATE FOR EB/IPC:DRBEAN, EAP/BCLTV AND EB/ODC
STATE ALSO PASS USTR BURCKY/ALVAREZ AND BRYAN
STATE ALSO PASS USPTO FOR URBAN
STATE ALSO PASS LIBRARY OF CONGRESS FOR TEPP
USDOC FOR LASHLEY AND 4431/MAC/AP/OKSA/HPPHO
USDOC ALSO FOR ITA/TD/OTEA/JJANICKE AND ITA/TD/SIF/CMUIR

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [ECON](#) [VN](#) [IPROP](#)

SUBJECT: VIETNAM: MICROSOFT FOCUSED ON IPR

SENSITIVE BUT UNCLASSIFIED PROTECT ACCORDINGLY

REF: HCMC 367

1. (SBU) Summary. While disappointed in the lack of progress in improving IPR protection in Vietnam, Microsoft remains committed to engaging the GVN on this critical issue. Microsoft and Business Software Alliance (BSA) representatives are looking at ways to encourage the GVN to adopt a legitimate software initiative and asked the USG to encourage the Prime Minister to send a letter to all GVN agencies ordering them to use only legitimate software. End summary.

2. (SBU) On March 30, Economic/C and Econoff met with Singapore and Bangkok-based representatives of Microsoft and the Business Software Alliance (BSA) to discuss Intellectual Property Rights issues in Vietnam. Microsoft employees were both regional senior managers and corporate government affairs representatives. Throughout the meeting it was clear that while Microsoft is frustrated with the lack of progress on IPR issues in Vietnam, it is committed to finding opportunities to engage with the GVN and to work out a strategy to develop positive momentum for change. Microsoft representatives indicated they would continue to engage senior level officials, including at the DPM level, to prioritize IPR issues.

3. (U) Econoffs explained that the Ambassador and Econoffs frequently highlight to GVN officials at every level two key points on the importance of IPR to Vietnam:

-- The GVN has prioritized attracting foreign direct investment (FDI) to Vietnam. Strong IPR is a critical factor attracting FDI, not only in the IT sector, but also across the board. Econoffs suggested that Microsoft work with other international software and hardware companies (including its competitors) to deliver a unified message to the GVN that IT companies will not look seriously at Vietnam until there is better IP protection. Microsoft noted that the Business Software Alliance (BSA) included a number of both hardware and software firms and was be a good vehicle for making such an approach.

-- Strong IPR enforcement is critical to the development of domestic industries that depend on IP - most notably the IT sector. Econoffs recommended Vietnam work with and provide assistance to the Vietnam Software Association (VINASA) to help this organization develop itself as a stronger advocate for the domestic software industry and improve VINASA's ability to influence government policy vis--vis IPR.

4. (SBU) Microsoft representatives noted that in their experience several things have to happen before a country is capable of effective IPR enforcement. First, Vietnam needs a strong legal framework that includes significant penalties for enforcement. Additionally high-level engagement on the issue is necessary. Microsoft noted that in some countries, a letter from the Prime Minister to all government agencies (on IP protection, including the use of legitimate software) has been the catalyst for change. And, of course, there is the need for effective enforcement. Finally, Microsoft noted that development of the private sector is also important - a domestic constituent base interested in IP enforcement is useful in engaging government action.

5. (SBU) Microsoft wants to encourage the GVN to ensure that all Government offices use only legitimate software. However, cost is clearly a concern for the GVN as well as an excuse for the negligible progress the GVN has made in this regard. Microsoft is looking into the possibility of IFI funding (ADB, WB etc) or concessionary commercial financing for a GVN strategy to implement a legitimate software initiative for all or some GVN national government entities. Microsoft representatives asked that in our engagement with the GVN - perhaps at the next BTA Joint Committee meeting in

May - we suggest that a positive and tangible step the GVN could take on IPR would be to have the Prime Minister send a letter to all government agencies instructing them to use only legitimate software.

16. (SBU) Microsoft representatives also highlighted their concerns about recent GVN comments that it plans to switch to open source software (like Linux) to "fix" its IPR problems. While acknowledging that the decision on what type of software the GVN wants to use is up to the Government, Microsoft asked us to help convey the message that the GVN should not switch to open source for the "wrong reasons." Switching to open source does not insulate the GVN from the responsibility of ensuring that all software used by the GVN is legitimately licensed, Microsoft asserted. Econoffs noted they had already raised this issue with the GVN.

17. Comment: Many of the factors Microsoft mentions as essential for strong IPR protection are beginning to come together in Vietnam. While the private sector still faces significant disadvantages vis-a-vis the state-owned sector, greater attention is being given to the importance of fostering the private sector development each day. New, albeit fledgling, business and music associations are cropping up with IPR enforcement at the top of their list of priorities. In addition, donors (including the USAID-funded Support for Trade Acceleration (STAR) Project) and the GVN are dedicating significant resources toward revising IPR-related legislation, including Vietnam's Civil Code, Civil Procedure Code and regulations on remedies. However, the GVN is not "leading by example" on the issue of copyright piracy. Government agencies of all shapes and sizes are loaded down with pirated software. An effort by the GVN to move toward comprehensive use of legitimate software - even if it is done ministry by ministry - would be a significant step forward and we should do everything we can to encourage and support such an effort.

BURGHARDT